

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
DANA GROTTANO, et al.,

Plaintiffs, **ANSWER TO SECOND**
AMENDED COMPLAINT

-against-

15-CV-9242 (RMB)

THE CITY OF NEW YORK, et al.,

JURY TRIAL DEMANDED

Defendants.
----- X

Defendants City of New York (“City”) and Joseph Ponte, as and for an answer to plaintiffs’ Second Amended Complaint (“SAC”), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the SAC.
2. Deny the allegations set forth in paragraph “2” of the SAC; to the extent such allegations set forth conclusions of law, no response is required herein.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “3” of the SAC.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “4” of the SAC.
5. Deny the allegations set forth in paragraph “5” of the SAC.
6. Deny the allegations set forth in paragraph “6” of the SAC.
7. Deny the allegations set forth in paragraph “7” of the SAC and refer the Court to the complaint in *Nimra Butt v. Officer Capers, et al.*, 15-CV-5758 (S.D.N.Y.) for a complete statement of its contents.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the SAC.

9. Deny the allegations set forth in paragraph “9” of the SAC and refer the Court to the media reports cited therein.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the SAC.

11. Deny the allegations set forth in paragraph “11” of the SAC and refer the Court to Directive #2007R-B for a complete statement of its contents.

12. Deny the allegations set forth in paragraph “12” of the SAC and refer the Court to Directive #2007R-B for a complete statement of its contents.

13. Deny the allegations set forth in paragraph “13” of the SAC and refer the Court to the full text of the comments and testimony partially quoted therein.

14. Deny the allegations set forth in paragraph “14” of the SAC.

15. Deny the allegations set forth in paragraph “15” of the SAC, and refer the Court to the DOI Report cited therein.

16. Deny the allegations set forth in paragraph “16” of the SAC, and refer the Court to the DOI Report cited therein.

17. Deny the allegations set forth in paragraph “17” of the SAC, and refer the Court to the DOI Report, deposition transcript and news article partially quoted or cited therein.

18. Deny the allegations set forth in paragraph “18” of the SAC, and refer the Court to the complete public statements partially quoted therein.

19. Deny the allegations set forth in paragraph “19” of the SAC, and refer the Court to the hearing transcript partially quoted therein.

20. Deny the allegations set forth in paragraph “20” of the SAC, and refer the Court to the complete public statements partially quoted therein.

21. Deny the allegations in paragraph “21” of the SAC.

22. Deny the allegations in paragraph “22” of the SAC; to the extent such allegations set forth conclusions of law, no response is required herein.

23. Deny the allegations set forth in paragraph “23” of the SAC, except admit that plaintiffs purport to bring this action as stated.

24. Deny the allegations set forth in paragraph “24” of the SAC, except admit that plaintiffs purport to seek relief as stated.

25. Deny the allegations set forth in paragraph “25” of the SAC, except admit that plaintiffs purport to proceed as stated.

26. Deny the allegations set forth in paragraph “26” of the SAC, except admit that plaintiffs purport to base jurisdiction as alleged.

27. Deny the allegations set forth in paragraph “27” of the SAC, except admit that plaintiffs purport to lay venue as alleged.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the SAC.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the SAC, except deny that plaintiff has any right to proceed anonymously.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the SAC, except deny that plaintiff has any right to proceed anonymously.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the SAC, except deny that plaintiff has any right to proceed anonymously.

32. Deny the allegations set forth in paragraph “32” of the SAC, except state that the City operates a number of jails through its Department of Correction (“DOC”).

33. Deny the allegations set forth in paragraph “33” of the SAC, except state that Joseph Ponte is the DOC Commissioner.

34. Deny the allegations set forth in paragraph “34” of the SAC except admit that Yolanda Capers is employed as a correction officer.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the SAC.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the SAC.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the SAC.

38. Deny the allegations set forth in paragraph “38” of the SAC except admit that plaintiffs purport to seek relief as stated.

39. Deny the allegations set forth in paragraph “39” of the SAC except admit that plaintiffs purport to proceed on behalf of a class of persons.

40. Deny the allegations set forth in paragraph “40” of the SAC.

41. Deny the allegations set forth in paragraph “41” of the SAC.

42. Deny the allegations set forth in paragraph “42” of the SAC.

43. Deny the allegations set forth in paragraph “43” of the SAC.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the SAC.

45. Deny the allegations set forth in paragraph “45” of the SAC.

46. Deny the allegations set forth in paragraph “46” of the SAC; to the extent such allegations set forth conclusions of law, no response is required herein.

47. Deny the allegations set forth in paragraph “47” of the SAC; to the extent such allegations set forth conclusions of law, no response is required herein.

48. Deny the allegations set forth in paragraph “48” of the SAC; to the extent such allegations set forth conclusions of law, no response is required herein.

49. Deny the allegations set forth in paragraph “49” of the SAC.

50. Deny the allegations set forth in paragraph “50” of the SAC.

51. Deny the allegations set forth in paragraph “51” of the SAC.

52. Deny the allegations set forth in paragraph “52 of the SAC.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the SAC.

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67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “67” of the SAC.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “68” of the SAC.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “69” of the SAC.

70. Deny the allegations set forth in paragraph “70” of the SAC.

71. Deny the allegations set forth in paragraph “71” of the SAC.

72. Deny the allegations set forth in paragraph “72” of the SAC.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “73” of the SAC.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “74” of the SAC.

75. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “75” of the SAC.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “76” of the SAC.

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78. Deny the allegations set forth in paragraph “78” of the SAC.

79. Deny the allegations set forth in paragraph “79” of the SAC.

80. Deny the allegations set forth in paragraph “80” of the SAC.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “81” of the SAC.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “82” of the SAC.

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86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “86” of the SAC.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “87” of the SAC.

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89. Deny knowledge or information sufficient to form a belief as to the truth of he allegations set forth in paragraph “89” of the SAC.

90. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “90” of the SAC.

91. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “91” of the SAC.

92. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “92” of the SAC.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “93” of the SAC.

94. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “94” of the SAC.

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96. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “96” of the SAC.

97. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “97” of the SAC.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “98” of the SAC.

99. Deny the allegations set forth in paragraph “99” of the SAC.

100. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “100” of the Amended Complaint.

101. Deny the allegations set forth in paragraph “101” of the SAC.

102. Deny the allegations set forth in paragraph “102” of the SAC.

103. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “103” of the SAC.

104. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “104” of the SAC.

105. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “105” of the SAC.

106. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “106” of the SAC.

107. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “107” of the SAC.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “108” of the SAC.

109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “109” of the SAC.

110. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “110” of the SAC.

111. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “111” of the SAC.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “112” of the SAC.

113. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “113” of the SAC.

114. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “114” of the SAC.

115. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “115” of the SAC.

116. Deny the allegations set forth in paragraph “116” of the SAC.

117. Deny the allegations set forth in paragraph “117” of the SAC.

118. In response to the allegations set forth in paragraph “118” of the SAC, defendants repeat and reallege each and every response to the preceding paragraphs of the SAC as if fully set forth herein.

119. Deny the allegations set forth in paragraph “119” of the SAC.

120. Deny the allegations set forth in paragraph “120” of the SAC.

121. Deny the allegations set forth in paragraph “121” of the SAC.

122. Deny the allegations set forth in paragraph “122” of the SAC.

123. In response to the allegations set forth in paragraph “123” of the SAC, defendants repeat and reallege each and every response to the preceding paragraphs of the SAC as if fully set forth herein.

124. Deny the allegations set forth in paragraph “124” of the SAC.

125. Deny the allegations set forth in paragraph “125” of the SAC.

126. Deny the allegations set forth in paragraph “126” of the SAC.

FIRST AFFIRMATIVE DEFENSE

127. The SAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

128. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE

129. At all times relevant to the acts alleged in the SAC, the duties and functions of the municipal defendants’ officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York has governmental immunity from liability.

FOURTH AFFIRMATIVE DEFENSE

130. Any injury alleged to have been sustained resulted from plaintiffs’ own culpable or negligent conduct and was not the proximate result of any act of the defendants.

FIFTH AFFIRMATIVE DEFENSE

131. Plaintiffs have failed to comply with the conditions precedent required for this lawsuit.

SIXTH AFFIRMATIVE DEFENSE

132. None of the defendants violated any clearly established constitutional right of which a reasonable person would have known, and therefore, said defendants are protected from liability by qualified immunity.

SEVENTH AFFIRMATIVE DEFENSE

133. Punitive damages may not be recovered against the City of New York.

EIGHTH AFFIRMATIVE DEFENSE

134. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation.

NINTH AFFIRMATIVE DEFENSE

135. Plaintiff has not complied with the Prison Litigation Reform Act ("PLRA"), and to the extent plaintiff may have complied with the PLRA their right to relief is limited as set forth therein.

TENTH AFFIRMATIVE DEFENSE:

136. Plaintiffs provoked any incident.

ELEVENTH AFFIRMATIVE DEFENSE

137. To the extent any force was used, it was reasonable, necessary, and justified.

TWELFTH AFFIRMATIVE DEFENSE

138. To the extent that the SAC can be read to include state law claims, they may be barred by the failure to comply with New York General Municipal Law §50-e, §50-I, 50-h and/or 50-k.

THIRTEENTH AFFIRMATIVE DEFENSE:

139. The SAC fails to allege facts with sufficient particularity to satisfy the requirements of Rules 8 and 9 of the Federal Rules of Civil Procedure.

FOURTEENTH AFFIRMATIVE DEFENSE:

140. Plaintiffs lack standing to seek injunctive or declaratory relief.

WHEREFORE, defendants request judgment dismissing the SAC in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 8, 2016

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
*Attorney for Defendants City of New York and
Commissioner Joseph Ponte*
100 Church Street
New York, New York 10007
(212) 356-2641

By: _____/s
Arthur G. Larkin

TO: All Counsel (by ECF)